

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5684 of 1984

Date of decision: 11-7-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CIVIL HOSPITAL KARMACHARI SAHKARI CANTEEN SOC. LTD.

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioners

Ms. P. S. Parmar for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/07/97

ORAL JUDGEMENT

The matter was called out for hearing in the first round and second round in the first sitting and third round in the second sitting. None appeared on behalf of the petitioners.

2. From 23-12-1996 the matter has been adjourned only on the ground that the counsel for the petitioners does not remain present. On 4th April, 1997 the matter came up for hearing, but none was present on behalf of the petitioners. Therefore, the petition was ordered to stand over beyond vacation. Then it has come up for hearing on 8th July, 1997. However, none put appearance on behalf of the petitioners. Still, one more indulgence was granted in the interest of justice. Today, again, the position remains the same.

3. Perused the special civil application and heard the learned counsel for the respondents.

4. Petitioner No.1 is a cooperative Society registered under the provisions of the Gujarat Cooperative Societies Act, 1961. Petitioner No.2 is its President. The name of the Society is, "Shri Civil Hospital Karmachari Sahkari Canteen Society Ltd." This society has been constituted by the Class IV servants working in the civil hospital. The objects of the Society as given out by the petitioner in para 3 of the petition are to provide cheap meals to the civil hospital employees and the relations of the patients who attend them. The petitioners stated that Class IV employees decided to constitute a cooperative society for running a canteen for the purpose of mutual help of the members and others who visit the civil hospital. The petitioners applied to the Administrative Officer, Civil Hospital, Ahmedabad, vide letter dated 31st August, 1984 for registration as well as for allotment of place in the Civil Hospital Compound for running canteen. The petitioners stated in the petition that the Administrative Officer, vide his letter dated 1st September, 1984 informed the petitioners that the portion of the land between 'A' block and 'B' block could be allotted to the Society. The petitioners stated that the Administrative Officer further stated in the said letter that in future when other offices of the Cooperative Department would be shifted, action will be taken for allotment of proper space. After registration of the Society, petitioner No.2 - President thereof, met respondent No.3 on or about 23rd October, 1984, when

respondent No.3 told him that the petitioner could put up katcha shed at their own cost at the place suggested in letter dated 1st September, 1984. Again, petitioner No.2 and others had approached respondent No.3 and informed him that they were going to put up katcha structure covered by cloth on the top. The petitioner stated that respondent No.3 has granted permission to the petitioner to put up katcha construction of bricks and poles. However, according to the petitioners, on account of shortage of time the petitioners have constructed shed of cloth just like mandap and they started canteen from 6th November, 1984.

5. Besides the petitioners ' canteen, the hospital authorities have granted permission and allotted land to many other persons named in para 6 of the special civil application. Over and above the persons named in para 6 of the petition, several other canteens are located in the hospital premises. Contract given to some of the contractors have come to an end, and in some cases canteens are being run without permission. The petitioners made further grievance that the hospital authorities have not taken any action against those persons. The petitioners have come up with the case that the present place is situated in the compound and there is no likelihood of causing any obstruction to the patients or the visitors or the traffic. The petitioners have challenged in this petition the notice dated 16th November, 1984 at annexure-D, of the Medical Superintendent, Civil Hospital, Ahmedabad, calling upon the petitioners to remove the shed and close down the canteen within four days. One of the grievance made by the petitioners is that this action has been taken by the said authority against the petitioners as other contractors running canteens have brought undue pressure on him.

6. Reply to this special civil application has been filed on behalf of respondents No.1, 2 and 3. Affidavit-in-reply on behalf of respondents No.2 and 3 is filed by the Administrative Officer who is said to have granted permission to the petitioners to start the canteen at the disputed place. Reply affidavit has been filed on behalf of respondent No.1 by Shri G. V. Parmar, Under Secretary, Health and Family Welfare Department, Sachivalaya, Gandhinagar.

7. The Administrative Officer, in his reply affidavit made statement on oath that he had no power to grant permission to the petitioners to carry on the canteen. He further stated that the Civil Hospital

authorities are not competent to grant permission, and that the power exclusively vests in the State Government. He further denied that he granted any permission to the petitioner to construct temporary shed of bricks and poles. The construction has been raised by the petitioners without any permission from the appropriate authority. The Administrative Officer made statement on oath that the President of Class IV Karmachari Mandal, Ahmedabad, has written a letter on 17th September, 1984 in which he has stated that if permission is not granted within 48 hours they will go on fast and he will be responsible for the consequences. In para 8 of the reply affidavit he has reiterated that none of the petitioners has contacted him for permission to such canteen; otherwise also he has no such authority to grant permission. The place where the canteen has been started by the petitioners is near the children's ward and is causing nuisance in the form of noise and unhygienic condition, for which the Ahmedabad Municipal Corporation had given notice. It has further been stated that Director, Post Graduate Studies and Research, Professor of Paediatrics and Head of the Department of Paediatrics had addressed letter dated 15-11-1984 to the Medical Superintendent, Civil Hospital, Ahmedabad stating that the construction of canteen is obstructing the light and preventing ventilation in the laboratory and some part of Ward B-2. It has further been stated that the canteen is likely to create lot of noise and dirt near the children's ward and in the said area there is use of loudspeakers and this type of activities are highly detrimental to the health of the children. The sum and substance of the reply of respondents No.2 and 3 is that under letter dated 1st September, 1984 the Administrative Officer has not granted any permission to the petitioner to start canteen. In letter dated 1st September, 1984 otherwise it was clearly mentioned that the petitioner had to take prior permission from the competent authority for making construction and starting canteen. The Administrative Officer has not allotted any place to the petitioners in the civil hospital compound to raise construction and to start canteen. Construction of any nature, kutcha, pucca or temporary, for running canteen has been raised unauthorisedly by the petitioner. Construction of canteen at the place in dispute is causing nuisance as well as unhygienic condition near the children's ward, and also obstructing light and preventing ventilation in the laboratory and some part of Ward B-2.

8. It is not the case of the petitioners also that under letter dated 1st September, 1984 any permission was

granted to them to make construction and start canteen. What they have stated in the petition, so far as respondents No.2 and 3 are concerned, is that oral permission was granted for raising construction and starting canteen. The case of the petitioner against respondent No.1 is that on 23rd October, 1984 the petitioners had approached the Deputy Secretary, for the purpose of permission to put up construction. When petitioner No.2 and other members of the executive committee met the Deputy Secretary Shri C.J. Jose, he stated that there would be no objection for the canteen being put up.

9. In the reply affidavit filed on behalf of respondent No.1 the deponent - Under Secretary - stated that the Government has not granted any permission to the petitioners to put up construction and run canteen. The question for construction of canteen was also discussed with the Deputy Secretary of the Department and there was discussion about other problems of Class IV employees. No permission for running canteen was given in writing by the Deputy Secretary, Health and Family Welfare Department at any time. In para 7 of the reply the deponent has stated that the Deputy Secretary advised the petitioners to form cooperative society and they may apply to the Government for necessary permission. Even at that time no permission was granted to the petitioners as alleged by them in the petition. It has been further stated that the representative of the association who was present at that time threatened to go on strike if the Government did not grant permission and there was no request made by the Union to the Government for permission for running canteen after the aforesaid discussion. After some time the Government came to know that the petitioner had already started the canteen without obtaining permission. The Deputy Secretary, Health and Family Welfare Department, therefore wrote letter to the Deputy Director on 23rd November, 1984 to verify the factual position and report the same. The deponent has further stated that the letter issued by the office of the Medical Superintendent dated 1-9-1984 is not an order for grant of land. Even if the Medical Superintendent has granted such permission, he had no authority to grant such permission and such permission is without any authority and the letter dated 1-9-1984 has no significance in the eye of law at all and no weightage should be given to that aspect. Rejoinder to the reply has been filed by the petitioners and therein they have come up with the case that permission has been granted orally and whatever stated by the respondents in the reply is not correct.

10. After going through the special civil application and the contents of the reply and the rejoinder, though it is correct that neither the Administrative Officer or the Superintendent of the Civil Hospital nor the Deputy Secretary to the Government, Health and Family Welfare Department, has granted permission for allotment of land and starting canteen to the petitioners in the civil hospital compound, it appears from the averments made in the reply and the letter dated 1-9-1984 of the Administrative officer that the Officers are in connivance with the petitioners. One thing is very clear that something has been given out to the petitioners by these officers. Though it is not the subject matter of the writ petition, on what consideration they felt the necessity of canteen, and what was the necessity for the Administrative Officer to give letter dated 1-9-1984 pinpointing the place which is likely to be allotted for the canteen but something wrong was there. In case the Administrative Officer has written this letter knowing full well that he is not the competent authority an inference could be drawn that he was the person involved in this episode and he has extended favour to the petitioner. He has acted beyond his authority to write this letter.

11. The petitioners made statement on oath against the the Superintendent of the Civil Hospital. Curiously enough, those averments have not been controverted by respondents No.2 and 3 in the reply affidavit. The Superintendent of the Civil Hospital has not filed affidavit. He has very conveniently avoided filing affidavit controverting the averments made in the petition. That goes to show that the Superintendent was also acting gloves in hand with the petitioner.

12. I fail to understand how the Class IV employees of the Civil Hospital could have raised construction in the compound of the civil hospital and started canteen where the Administrative Officer and Superintendent of the Civil Hospital are sitting is another important circumstance which goes against them and from which an inference could be drawn that these two officers have connived with the petitioners. It is really serious state of affair that instead of maintaining pollution and nuisance-free atmosphere, where people suffering from various ailments are treated, these officers remained silent spectators when the petitioners raised construction and started canteen in the compound of the Civil Hospital. This conduct of the two officers is

notable. The State Government has also very conveniently tolerated the same, instead of taking these officers to task. The petitioners have utilized their power of association of employees not for good cause. It is an admitted case of the respondents that the office bearers of the Union of Class IV employees threatened the Deputy Secretary, when they met him, that in case permission is not granted to start the canteen in the Civil Hospital compound, they will go on strike. This conduct of the office bearers of the employees' union is not tolerable. It is understandable if some problems and difficulties of class IV employees relating to their service conditions are raised, it certainly deserve due consideration, but their conduct in the present case deserves to be deprecated. The paramount consideration of the employees of the hospital should have been to see that they provide service to the suffering and ailing persons who come to the hospital for treatment. The class IV employees of the Civil Hospital are not required to think of providing cheap meals to relatives of patients or persons visiting the hospital or mutual help to the members of their association. That work could very well be done by the concerned persons. If the association of class IV employees are having some pious ideas, they are fortunately serving at a place where they could help the needy and ailing persons who come to the hospital for treatment, and service to such persons would be service to God himself. Be that as it may.

13. The fact remains that the Administrative Officer or the Medical Superintendent of the Civil Hospital or even the Deputy Secretary, Health and Family Welfare Department was not competent to grant permission to the petitioners to make construction of any sort in the Civil Hospital Compound and start canteen. Deputy Secretary in the Department does not mean the State Government. No permission was granted to the petitioners in the form of an order in writing to put up construction and to start canteen. The petitioners have no right whatsoever to put up any construction and to start canteen. It is a case where the petitioners are employees of the Civil Hospital itself. As members of the Society they made encroachment on the land of Civil Hospital. Not only that they made encroachment on the land, but also started canteen without permission. In the garb of association the petitioners cannot grab Government land, and cause nuisance in the Hospital compound. The petitioners have taken the law in their own hands. Petitioner No.1 is an association of the class IV employees of the Civil Hospital. Petitioner No.2 is also an employee of the Civil Hospital. In such matters, not only the

petitioners should be asked to remove the canteen but drastic action also should be taken by the Government against the persons responsible for creation of such a situation.

14. No legal or fundamental right of the petitioners has been infringed. Writ jurisdiction of this Court under Article 226 of the Constitution of India is not meant for the protection of Government servants who encroach upon the Government land and create nuisance at public place. Equitable and extraordinary jurisdiction of this Court is meant to be exercised for giving reliefs to law abiding persons where their rights are to be protected or injustice has been meted out to them. If Government employees like the petitioners, who encroach upon Government land, are protected, then certainly it would be abuse of process of the court.

15. As far as the plea of discrimination raised on the ground that other canteen contractors who are also illegally running canteens have not been asked to vacate the place and only the petitioners have been asked to remove the canteen is concerned, suffice it to say that in the reply to the special civil application the respondents have come out with case that necessary action has been taken against those persons. However, reply to this grievance of the petitioners is not specifically forthcoming and there may be some justification in the say of the petitioners that those persons who are supported by one ex M.L.A. belonging to Congress Party have brought pressure on the authorities to remove the canteen of the petitioners. But plea of discrimination on this ground is not tenable. It is settled law that ground of discrimination on the basis of illegal or unwarranted orders or acts or omission of the authority is not tenable. Those persons may also be unauthorized occupants or illegally continuing at the place. But I would not express any final opinion as they are not before this Court. The petitioners themselves have stated that those persons are illegally continuing there. If that is the case, then how it can be said to be a case of discrimination ? It is the case of the respondents that certain other persons are also illegally continuing and carrying on canteen in the civil hospital compound, and suits have been filed against those persons or other proceedings have been taken. If it is so, the respondents should have taken care to make request to the respective courts or authorities where such matters are pending for expeditious disposal of the suit or proceeding; and it is expected of the Court or Authority before whom such requests are made to expeditiously

decide such matters.

16. In the result this special civil application fails and the same is dismissed. The petitioners are directed to pay Rs.10,000/- (Rupees ten thousand) by way of cost of this petition to respondent No.1. This exemplary cost is awarded for the reason that here is a case where Government's own employees have made encroachment of Government lands and further they started canteen, which, as per the case of the respondents, has caused nuisance and created unhygienic condition near the Children's ward as well as obstructed light and prevented ventilation in the laboratory and some part of ward B-2. The said amount of Rs.10,000/-, after the same is recovered from the petitioners, is directed to be deposited in the Chief Minister's Relief Fund. Receipt for deposit of the amount shall be produced before this Court. It is further directed that the amount of Rs.10,000/- shall be recovered proportionately from each member of the petitioner No.1 Society in case petitioners fail to paythesame.. The petitioners are directed to remove the construction, and to discontinue the canteen within seven days from today, failing which it shall be open to the respondents to remove the construction immediately by their own means. Rule discharged. Interim relief granted earlier stands vacated.

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